IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No._____

C. T. EARLE, Petitioner

vs.

ILLINOIS CENTRAL RAILROAD CO. & YAZOO & MISSISSIPPI VALLEY RAILROAD CO., Respondents

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

This brief, in support of the petition for a writ of certiorari, seeks to reverse the judgment of the Court of Appeals, and the Supreme Court of Tennessee, and to have affirmed the decree of the Chancery Court of Shelby County, Tennessee. The Chancery Court sustained the bill of complaint of petitioner, and granted a recovery of damages for breach of his railroad labor contract of employment. This decree was reversed by the Court of Appeals of Tennessee, and the bill was dismissed. The Supreme Court of Tennessee denied a petition for a writ of certiorari duly presented, and

thereby, endorsed the opinion of the Court of Appeals, and adopted same as its own, leaving the decree of the Chancery Court reversed.

The Tennessee Appellate Courts had to reach their results by what we claim are violations of the Railway Labor Act.

STATEMENT OF THE CASE

Petitioner was a yardman in the employ of the railroads since 1923, and was working under a written contract secured by the Brotherhood of Railway Trainmen with the railroads, effective April 1, 1924. On July 26, 1933, without a trial, he was discharged on the sole ground that he had not performed service off the regular extra board within the preceding six months. Undisputed facts developed that he had worked at his usual duties as yardman, May 29, 30, 31, and June 30, 1933, and then it was claimed that such service did not count, and the appellate courts hold that he was not in the service on those dates, and thereby defeat his claim.

This is a succinct statement. A more detailed statement is made in the petition for certiorari, supra, p—— and reference is made thereto, in the interest of brevity, and to avoid repetition.

SUMMARY OF THE ARGUMENT

The Railway Labor Act of 1926 (44 Stat. 577), in Sec. I, provides a definition of a railroad "employee", and the term, "in the service"; and in Sec. 2, first, re-

quires railroads to exert every reasonable effort to make and maintain agreements with employees concerning rates of pay, rules, and working conditions, and in Sec. 6, provides that changes may be made in agreements only upon thirty days written notice followed by negotiation and agreement.

The term "employee", and the term "in the service," have been construed to include and mean an employee who has been laid off on a reduction of force, this being the situation of petitioner; but petitioner's position is stronger than the employees considered in the case because he actually worked.

N. C. & St. L. Ry. Co. vs Employees Dept. A. F. of L. (6th Cir) 93 Fed. (2nd) 340
Certiorari Denied, 303 U. S. 649

The opinion sets out the same construction to have been made by The Railway Labor Board, The Interstate Commerce Commission, and The Mediation Board.

The Tennessee appellate courts conflict with the statute, and with these interpretations in their holding that petitioner was not "in the service" on the days he worked, and this holding, these courts, themselves, say was the determinative question, and thus they had no non-federal ground, and no other ground even claimed, on which their decision could otherwise rest.

These courts also violate the other provisions of the Railway Labor Act in their reasoning processes toward establishing in their minds that petitoner was not "in the service".

Were Federal Questions Properly Raised?

Proposition of Fact No. 29, filed in the Chancery trial called attention to the applicability of the Railway Labor Act, and first raised the question. (R 157-158).

The Chancellor in his opinion fully observed the Act. This proposition of fact was in the record before the Court of Appeals. That Court first violated the Act, and the question was again raised in the petition for certiorari, assignment of error No. 7. (R 229-230).

None of the courts apparently took notice of the question, but the appellate courts, in their path of reasoning, inevitably cross the Act, and their ultimate, determinative holding violates it.

We submit the federal question was properly presented and denied, under the rulings in:

St. L. I. M. vs. Starbird, 243 U. S. 592.

The Transcript of the Record

In securing the transcript of the record we have been guided by the rulings in:

Texas & Pacific Ry. Co. vs. Leatherwood.
250 U. S. 478
Railway Labor Act of 1926, Amended, 1934.
(48 Stat. 1185)

This amended Act took effect a year after petitioner was discharged. However, in line with the evident policy of the original Act, the amended Act required that railroads file a copy of their contracts with employees, with the Mediation Board. This was done,

and the copy filed, or one like it, was produced in this record, and it proves to be the same contract as that sued on, Effective April 1, 1934, found on pages 32-41 of exhibit 2 to the bill. The produced copy, being Document No. 5. Produced.

We submit that on account of the effective date of the contract produced, and on the basis of the evident policy of the Railway Labor Act, we are entitled to an estoppel against the defendants to contend that anything else is their contract with yardmen.

MOORE vs. I. C. R. R. CO.
180 Miss. 276, 176 So. 593
U. S. D. C. 24 Fed. Suppl. 731
5th Cir. 112 Fed (2nd) 959
312 U. S. 630.

This case is of interest because it involved the very same yardman labor contract as in the instant case, and the same railroads.

The point of decision in this Court was that the Mississippi Supreme Court was the ruling authority on the question of the applicability, vel non, of a Mississippi statute of limitation of 3 years. The decision has no weight against us in the instant case because the Tennessee courts had no Tennessee statute to construe. They simply mined in the common law and, as elsewhere shown, produced an implied contract of usage and practice, which was not pleaded, and was coram non judice, and substituted it for the written contract sued on, and directly violated the Railway Labor Act in terms, and spirit.

The Moore case involved the very same contract, and the several opinions interpret same, and we rely upon these views here. A great deal of similarity will be noted. The same railroads in that case claimed they had a "policy", or perhaps a "practice", or "understanding", that they would retain no employee who brought a suit against them, as Moore had done. The Fifth Circuit felt, and so stated, that if they had such a policy, and expected to rely on it as a just cause for discharge, they should put it plainly in the contract. The Tennessee Courts would be content to go back to the old usage mines and dig it out.

One point of difference is that Moore laid off, voluntarily, a whole year, conducting another suit against his employers: Earle, in the instant case, stayed available and worked when called on.

We now submit a number of propositions on railroad labor contracts:

The railroad has by the labor contract limited its power to discharge an employee, to the one method, to-wit: by a trial initiated by the railroad on charges made for good cause, with right of accused employees to attend, be represented, hear and examine witnesses, have a copy of testimony, with right of appeal. There are many cases of recovery of damages for breach in this particular.

Moore vs. I.C.R.R., 180 Miss. 276; 176 So. 593
" " " U.S.D.C., 24 Fed. Supp. 731
" " " 5th Circuit, 112 Fed. (2nd) 959
" " " U.S. Sup. Ct. decided March 31, 1941 case No. 550, Oct. Term 1940. 312 U.S. 630.

McGlohn vs. G.&S.I. Ry. Co., 174 So. 250.
G. & S. I. Ry. Co. vs. McGlohn, 184 So. 71.
McGee vs. St. Joe B.L.R. Co., 110 S.W. (2nd) 389
93 S.W. (2nd) 1111
McCoy vs. St. Joe B.L.R. Co., 77 S.W. (2nd) 175
Piercy vs. L.&N.R.R.Co., 198 Ky. 248; 248 S.W. 1042, 33 A.L.R. 322.
Rentschler vs. Mo. Pac. R. Co., 85 A.L.R. 1, 126 Neb. 493.
Lockwood vs. Chitwood, 89 Pac. (2nd) 951.
Ward vs. Kurn (Mo.) 132 S.W. (2nd) 245.

In Railroad labor contracts, the trials provided for do not make the railroad officials the final judges, and the arrangements for the handling of grievances, either by the individual employee, or through his union, are not means of concluding the individual, nor are they a prerequisite to a resort to the courts for relief, upon an unjust discharge without good cause; but the individual employee, may without resorting to any of these methods, and without regard to their action in case he does resort thereto, sue in the courts and obtain relief:

I.C.C.R. vs. Moore, 112 Fed. (2d) 959
Moore vs. I.C.R.R., U.S. Supreme Court, March 31, 1941.
Case No. 550—Oct. Term (1940)
312 U.S. 630.
Texas & N.O.R. Co. vs. Bro. of R.R. & S.S, Clerks 281 U.S. 548
Rentschler vs. Mo.Pac.R.Co. (Neb.) 85 A.L.R. 1, 126 Neb. 493
Cole Mfg. Co. vs. Collier, 91 Tenn. 525
Atkinson vs. R.R.E.M.R.S. Co., 160 Tenn. 158

A wrongfully discharged employee may, either before or after, he has pursued the remedies provided in the contract as to seeking reinstatement through the labor union officials, or through the railroad's offcials, acquiesce in the discharge and ask for damages for breach of contract in a court of law.

I.C.R.R. vs. Moore, 112 Fed. (2d) 959
Moore vs. I.C.R.R., U.S. Supreme Court March 31, 1941.
Case No. 550—Oct. Term (1940) 312 U.S. 630.
McClure vs. L.&N.R.R., 64 S.W. (2nd) 538
Ward vs. Kurn, 132 S.W. (2nd) 245
Rentschler vs. Mo.Pac. R. Co., 85 A.L.R. 1, 126 Neb. 493.
McGee vs. St. Joe B.L.R., 110 S.W. (2nd) 389
93 S.W. (2nd) 111
McCoy vs. St. Joe B.L.R., 77 S.W. (2nd) 175
McGlohn vs. G. & S.I.R. Co., 174 So. 250
G. & S.I.R. Co. vs. McGlohn, 184 S. 71
Robinson vs. Dahm, 150 N.Y. Supp. 1053
Piercy vs. L. & N.R.R. Co., 198 Ky. 248; 248 S.W. 1042; 33 A.L.R. 322

In Collective Bargaining contracts with railroad labor, the printed contract becomes the individual contract of each employee when placed in his hands or published among the employees; and an individual may sue thereon.

Ward vs. Kurn, 132 S. W. (2d) 245
Rentschler vs. Mo. Pac. R. Co. (Neb.) 85 A.L.R. 1, 126 Neb. 493
Piercy vs. L. & N.R.R., 198 Ky. 248, 248 S.W. 1042 33 A.L.R. 322

McClure vs. L. & N. R.R. 16 Tenn. App. 369, 64 S.W. (2d) 538
Cross Mt. Coal Co. vs. Ault, 157 Tenn. 461
Lockwood vs. Chitwood (Okla) 89 Pac. (2nd) 951
McGee vs. St. Joe B.L.R. (Mo.) 110 S.W. (2d) 389, 93 S.W. (2d) 1111
McCoy vs. St. Joe B.L.R. (Mo.) 77 S.W (2d) 175
Moore vs. I.C.R. 180 Miss., 276; 176 So. 593
" " " U.S.D.C. 24 Fed. Supl. 731
" " " 5th Circuit, 112 Fed. (2d) 959
" " " U.S. Sup.Ct. March 31, 1941 Case No. 550 Oct. Term (1940) 312 U.S. 630.
McGlohn vs. G. & S.I. Ry. Co. (Miss) 174 So. 250
Gulf & S.I. Ry. Co. vs. McGlohn, 184 So. 71
Robinson vs. Dahm, 150 N.Y. Suppl. 1053
Association of Ind. Corp. vs. McAlexander, 168 Tenn. 443
Title Guaranty Co. vs. Boshnell, 143 Tenn. 685

An individual beneficiary under a group contract, or a parent contract, is entitled to specific notice of any change therein which may affect his rights thereunder.

Powers vs. Journey Bricklayers Union, 130 Tenn. 643

The management of the railroad does not possess the arbitrary power to release from the service permanently any employee laid off on account of reduction in force upon any flimsy pretext or reason and the employee be without remedy. The employee must be retained unless good cause be shown upon a trial. Mere reduction of force is not good cause.

Ward vs. Kurn (Mo) 132 S.W. (2d) 245
McClure vs. L. & N.R.R. Co., 64 S.W. (2d) 538

Ill. Cent R.R. vs. Moore, 112 Fed. (2nd) 959
Moore vs. I. C. R. R., U. S. Sup. Ct., Mrch 31, 1941
389, 93 S.W. (2d) 1111
Case No. 550, Oct Term (1940) 312 U.S. 630
McClure vs. L. & N.R. 64 S.W. (2d) 538
Rentschler vs. Mo. Pac. R. Co., 85 A.L.R. 1, 126
Neb. 493.
McGee vs. St. Joe B.L.R. 110 S.W. (2d) 389,
93 S.W. (2d) 1111
McCoy vs. St. Joe B.L.R. 77 S.W. (2nd) 175
McGlohn vs. G. & S.I.R. Co., 174 So. 250
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Robinson vs. Dahm, 150 N.Y. Supp. 1053
Piercy vs. L. & N.R.R., 198 Ky. 248,
248 S.W. 1042, 33 A.L.R. 322

Seniority is a valuable right, under railroad labor contracts, and this right the courts will protect at the suit of the indivdual.

Lockwood vs. Chitwood (Okla), 89 Pac. (2d) 951
Rentschler vs. Mo. Pac. R. Co. (Neb.), 85 A.L.R. 1,
126 Neb. 493
Piercy vs. L. & N.R.R., 198 Ky. 248; 248 S.W. 1042
33 A.L.R. 322
McClure vs. L. & N.R.R., 16 Tenn. App. 369
McGee vs. St. Joe B.L.R. Co. (Mo.) 110 S.W. (2d)
389, 93 S.W. (2d) 1111.
McCoy vs. St. Joe B.L.R. Co. (Mo.), 77 S.W. (2d)
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Moore vs. I.C.R.R., 180 Miss. 276, 176 So. 593
" " " U.S.D.C. 24 Fed. Supl. 731
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" " " U.S. Sup. Ct. March 31, 1941
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McGlohn vs. G. & S.I. Ry. Co. (Miss.), 174 So. 250
Gulf & S.I. Ry. Co. vs. McGlohn, 184 So. 71
Robinson vs. Dahm, 150 N.Y. Supl. 1053

Defendants having filed with the National Mediation Board a copy of what they represented to that board to be the contract with yardmen, are bound by that as the contract, and are not permitted to add to or vary or dispute that as being the sole contract, in view of the National Railway Labor Law which requires the filing of this contract, and the filing of any changes which may be made therein This is an estoppel based directly on statute.

U.S. Railway Labor Act of 1926, 1934, 44 Stat. 577 48 Stat. 1185.
Ward vs. Kurn (Mo.), 132 S.W. (2d) 245
Moore vs. I.C.R.R., U.S. Sup. Ct. Opinion, March 31, 1941, Case No. 550, Oct. Term (1940) 312 U.S. 630

It is well settled that oral testimony is not admissible to contradict, add to, or vary, the terms of a written contract; even to explain same when the written contract is plain and unambiguous. There is no conflict and no ambiguity in the written contract involved in this case, and it is the sole functon of the Court to construe and interpret same.

Ward vs. Kurn (Mo.), 132 S.W. (2d) 245
Gibson Co. vs. Fourth & First N. Bank, 20 Tenn. App. 177
McQuiddy Prtg. Co. vs. Hirsig, 134 S.W. (2d) 197-204 Tenn. Code Sec. 9726
Litterer vs. Wright, 151 Tenn. 210
McGannon vs. Farrell, 141 Tenn. 210

Deaver vs. Mahan, 163 Tenn. 429
Cobb vs. Wallace, 45 Tenn. 539
Searcy vs. Brandon, 167 Tenn. 218
Todd vs. Bank, 172 Tenn. 526

Oral testimony, as against a written contract, cannot be justified as admissible on the theory of subsequently made agreements, when the defendants' answer contains the positive averment that the agreements were long before complainant entered the service, that date being 1923, and when the written or printed contract was executed in 1924. This would constitute a distinct variance between allegata and probaba.

Pencil Co. vs. R.R., 124 Tenn. 57

When the answer filed by defendants in its pleading avers that the agreement was thus and so, under such a pleading the defendants may not support the averments by oral proof which is offered as admissible on the basis of being practical interpretation, or usage, because this involves a distinct variance between the pleading and proof, between allegata and probata: If a contract is averred, a contract must be proven, not mere usage or interpretation.

Pencil Co. vs. R.R. 124 Tenn. 57
R.R. vs. Naive, 112 Tenn. 235.

When suit is based on a written contract, oral testimony cannot be admitted under the theory of practical interpretation by the parties, (a) when there is no ambiguity in the words or terms used in the contract, at which such testimony is directed (b) when the written contract itself provides abundant usage of the terms and words fully indicating their meaning, and (c) when

the so-called practical interpretation is nothing but generalized statements by witnesses, who fail and refuse to produce the instances of application and usage; or when the interpretation is just simple interpretation, and not practical, or supported by practice.

Ward vs. Kurn (Mo.) 132 S.W. 245
Neilson vs. Lowe, 149 Tenn. 563
Pencil Co. vs. R.R., 124 Tenn. 57

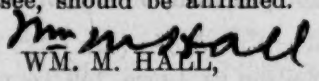
The measure of damages for breach of contract is found by taking the earnings of the next junior man and deducting the wages actually earned by the discharged employee in other fields of work for the period covered.

I.C.R.R. vs. Moore, 112 Fed. (2d) 959
Moore vs. I.C.R.R., U.S. Supreme Court, March 31, 1941, Case No. 550, Oct. Term (1940) 312 U.S. 630
Ward vs. Kurn (Mo.), 132 S.W. (2d) 245

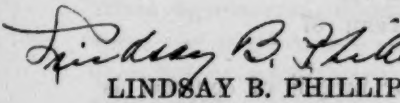
A party to a contract, or one suing on a contract, is not estopped, or committed by any former misconception, or mistaken construction of the instrument, but may abandon any former conceptions of his rights, and adopt any more favorable construction that a court of justice may give, this matter being a matter of law for courts, and the litigant being entitled to enlightenment and progress of opinion.

Tate vs. Tate. 126 Tenn. 169.

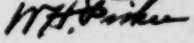
It is respectfully submitted that under the law and the facts of this case, the judgments of the Court of Appeals, and the Supreme Court of Tennessee, should be reversed, and the decree of the Chancery Court of Shelby County, Tennessee, should be affirmed.



WM. M. HALL,
Memphis, Tenn.,
Attorney for Petitioner.



LINDSAY B. PHILLIPS
and
W. H. FISHER,
Both of Memphis, Tenn.,



Of Counsel.